

DEVELOPMENT AGREEMENT

Between

THE CITY OF SEATTLE

And

THE CENTRAL PUGET SOUND REGIONAL TRANSIT AUTHORITY

Regarding

CAPITOL HILL STATION TRANSIT ORIENTED DEVELOPMENT

This Development Agreement (“Agreement”) is entered into by and between THE CITY OF SEATTLE (“City”), a Washington municipal corporation, and the CENTRAL PUGET SOUND REGIONAL TRANSIT AUTHORITY (“Sound Transit”), a regional transit authority created pursuant to Chapter 81.104 RCW and Chapter 81.112 RCW (together the “Parties”).

RECITALS

- A. Sound Transit is constructing its Capitol Hill Station (“Station”) as part of its University Link light rail project between downtown Seattle and the University of Washington Campus. The Station is an underground station with three above-ground entrances and a ventilation shaft structure.
- B. The North Entry to the Station and a ventilation shaft will be located on the block bounded on the west by Broadway East, on the east by 10th Avenue East, on the north by East John Street, and on the south by East Denny Way; the entirety of this area is presently devoted to construction of the underground station and transit tunnels.
- C. Sound Transit also acquired multiple parcels located immediately south of East Denny Way between Broadway and East Nagle Place on which the South Entry will be constructed; and two parcels located on the west side of Broadway, starting approximately 60 feet south of East Denny Way, on which the West Entry will be constructed. These areas also are presently devoted to construction staging.
- D. On August 8, 2011, the City’s Department of Planning and Development (“DPD”) issued its Analysis and Decision of the Director for application numbers 3009795, 3009792, and 3009794, approving the Master Use Permit (“MUP”) for the Station entry buildings and the ventilation shaft structure. This Agreement does not alter the approvals granted by this prior MUP in any manner, and this Agreement should be interpreted to be consistent with the MUP.

- E. The Station parcels are within the Capitol Hill Station Area Overlay District, and once construction of the Station is complete, the parcels not needed by Sound Transit for Station entrances and the ventilation shaft, comprising approximately 107,459 square feet, will be surplus to Sound Transit's needs. Sound Transit must sell surplus property at fair market value pursuant to its adopted policies for disposition of surplus real property.
- F. On September 19, 2011, the City Council passed Ordinance No. 123711, adopting SMC 23.61.016 to facilitate use of the development agreement authority granted by RCW 36.70B.170 through .210. Those City and State Code sections provide the primary regulatory context for this Agreement.
- G. Beginning in 2006, the City and Sound Transit engaged with the Capitol Hill community to plan for transit-oriented development on the portions of the parcels that will be surplus to Sound Transit's needs. This planning process included development of the *Capitol Hill Light Rail Station Sites Urban Design Framework* ("UDF"), which expresses the community's vision and its recommendations for development of these properties.
- H. Sound Transit developed its *Coordinated Development Plan*, dated _____ 2013 ("CDP") attached as Exhibit 2, in response to the UDF and its adopted policies for disposition of surplus real property. The CDP is intended to provide flexibility for developers to comply with the vision of the UDF while responding to market conditions and Sound Transit's requirements.
- I. The CDP identifies five Sites: A, B-North, B-South, C, and D. This Agreement applies to those five Sites, the area of which is legally described in Exhibit 1.
- J. All five Sites are zoned Neighborhood Commercial, and approximately half of Site D also is within the Major Institution Overlay District of Seattle Central Community College. The Broadway-facing areas of Sites A, C, and D are within a Pedestrian Designated overlay zone.
- K. Sound Transit will dispose of Sites A, B-South, and C by means of a competitive process that will begin with a Request for Qualifications ("RFQ"), followed by a Request for Proposals ("RFP"). Sound Transit will dispose of Site D through a similar process if Seattle Central Community College does not acquire Site D pursuant to a prior agreement with Sound Transit. Sound Transit will dispose of Site B-North in cooperation with the City's Office of Housing by offering that Site for development exclusively as affordable housing. The timing of these processes will depend upon site availability after construction of the Station is complete, as determined by the Sound Transit Board.
- L. Sound Transit will not send out its RFQ for development of these five Sites until after the City approves Lot Boundary Adjustments so that the boundaries of the legal parcels correspond to the Sites depicted in the CDP.

- M. Sound Transit intends to require each building on the five Sites to be designed and built to achieve, at a minimum, the Leadership in Energy and Environmental Design Silver rating or the Washington Evergreen Sustainable Development Standards.
- N. On October 5, 2012, staff from the City and Sound Transit executed a *Term Sheet Between The City Of Seattle And Sound Transit In Anticipation Of Agreements Regarding Capitol Hill Transit Oriented Development*. This Term Sheet expresses the commitment of staff from the City and Sound Transit to negotiate in good faith a draft of this Agreement to present to the City Council and the Sound Transit Board.
- O. On _____, DPD completed the review required by the State Environmental Policy Act (“SEPA”).
- P. On _____, the Director of DPD submitted her recommendation, consistently with SMC 23.61.016.B and D, that the City Council approve this Agreement.
- Q. On _____, the City Council conducted a public hearing on this Agreement, consistently with SMC 23.61.016.E and RCW 36.70B.200.
- R. On _____, the City Council voted to approve this Agreement, authorized its execution by the Mayor, and adopted site-specific design guidelines that will supplement the Capitol Hill Neighborhood Design Guidelines.
- S. On _____, the Sound Transit Board approved this Agreement and authorized its execution by Sound Transit’s Chief Executive Officer.

NOW, THEREFORE, in consideration of the mutual promises and covenants set forth herein, the City and Sound Transit hereby agree as follows:

1. REGULATORY EFFECT OF THIS AGREEMENT

1.1 Future development of Sound Transit’s surplus land on the five Sites shall be regulated by the City pursuant to this Agreement, and by the Seattle Municipal Code to the extent the Code is consistent with this Agreement. In the event of a conflict or inconsistency between this Agreement and the Code, this Agreement shall prevail.

1.2 This Agreement shall not apply to Site D to the extent it is owned and developed by Seattle Central Community College pursuant to its Major Institution Master Plan.

1.3 Any complete application for a MUP submitted to the City before the termination or expiration of this Agreement shall be regulated under, and be reviewed consistently with: (a) this Agreement; and (b) the sections of the Seattle Municipal Code specifically referenced in this Agreement, as those code sections are in effect on the date of this Agreement.

1.4 If a complete application for a MUP submitted to the City before the termination or expiration of this Agreement results in an issued MUP, and if that MUP has not expired or been suspended or revoked, then any complete application for a related construction permit shall be regulated under, and be reviewed consistently with: (a) this Agreement; (b) the sections of the Seattle Municipal Code specifically referenced in this Agreement, as those code sections are in effect on the date of this Agreement; and (c) to the extent they are not inconsistent with this Agreement, the Land Use Code and other land use control ordinances under which the MUP application was considered vested.

1.5 The City and developers of the Sites should consult the UDF and CDP for guidance in interpreting this Agreement, but neither the UDF nor the CDP is regulatory except to the extent that specific portions of the CDP are incorporated into this Agreement.

1.6 Buildings and open spaces constructed on the Sites shall approximately conform to the dimensions and locations depicted in the CDP, which are approximate and not based upon site surveys.

1.7 The number of residential units stated in the CDP are estimates and reflect assumptions about sizes and types of units. Although residential uses are required by the Agreement, no specific number of units is required in any building by this Agreement.

2. USES

2.1 The Broadway-facing areas of Sites A, C, and D shall include pedestrian-oriented nonresidential uses that have the potential to animate the sidewalk environment, as referenced in the CDP.

2.2 Sites A and C shall be developed as mixed use-buildings.

2.3 Site D may be developed either as a mixed-use building or by Seattle Central Community College pursuant to its Major Institution Master Plan.

2.4 All uses permitted in the underlying zones are permitted within the five Sites, except that Site B-South shall be developed only with residential uses or with live-work units, and the west-facing ground floor units may include offices other than customer service offices.

2.5 Site B-North shall be developed exclusively as Affordable Housing, which may include affordable live-work units that do not include a retail use. For purposes of this Agreement, "Affordable Housing" means affordable housing as defined in SMC 23.84A.016, for households with incomes not exceeding 60% of "median income" as defined in SMC 23.84A.025.

2.6 Notwithstanding the limitations imposed by Sections 2.2, 2.4, and 2.5, a community center as defined in SMC 23.84A.018 shall be permitted within the first 40 vertical feet on Sites A, B-North, C, and D. The area of any community center shall be exempt from FAR calculations.

3. GENERALLY APPLICABLE DEVELOPMENT STANDARDS

3.1 The five Sites together will achieve a Green Factor score of 0.302, contributing proportionately 55% for Site A, 20.5% each for Sites B-North and B-South, 2.5% for Site C, and 1.5% for Site D.

3.2 The maximum parking ratio for residential uses shall be 0.7 stalls per residential unit, as illustrated on page 16 of the CDP. Parking space rents may not be bundled with rents for Affordable Housing or with rents for Affordable Units as defined in Section 5.

3.3 Buildings on Sites A, C, and D shall be built to a minimum height of 74'11", with a maximum six floors excluding parking, and a developer may request to build up to 85' in height in order to add an additional floor, in exchange for the provision of enhanced affordable housing, as described in Section 5.4.

3.4 Buildings on Sites B-North and B-South shall be built to a minimum height of 74'11" and may be built up to a height of 85' as a matter of right.

4. OPEN SPACE

4.1 Sites A and B-South shall be responsible for the publicly accessible open space areas required by this Agreement and depicted in the CDP, pages 7 and 12. No additional open space is required on any Site beyond what is required by this Agreement.

4.2 Site A shall be responsible for constructing and maintaining two large open space areas: a private street along the eastern boundary of Site A referred to as Nagle Place Extension ("NPE"), and a Plaza immediately west of NPE and south of Sound Transit's Station Vent Shaft. NPE shall be 28 feet in width, and the portion of the Plaza south of the Vent Shaft shall be 53 feet in width between the west curb line of NPE and the building plinth. Throughout this Agreement, "plinth" means a flat podium or foundation that provides a consistently level plane for the first floor of the building.

4.3 Site A also shall construct and maintain a building pass-through between Broadway East and the Plaza, and a 12-foot-wide private plaza on top of the plinth adjacent to East Denny Way.

4.4 Site B-South shall construct and maintain a building pass-through between NPE and 10th Avenue East.

4.5 Each of these open space areas shall be constructed in the locations and to the approximate dimensions depicted in the CDP on pages 3, 7, 10, and 12. Each of these open spaces shall be privately owned but publicly accessible, as described below.

4.6 The Plaza and NPE shall be open to pedestrians and bicyclists during daylight hours and a minimum 16 hours per day. In addition, pedestrian and bicycle access through the Plaza to the bicycle parking areas shall be available whenever the light rail system is in operation.

4.7 The owner of Site A shall allow members of the public using the Plaza and NPE to engage in activities that are lawful on public sidewalks, except that those activities that would require a street use permit if conducted on the sidewalk may be excluded or restricted. Free speech activities such as hand billing, signature gathering, and holding signs, if done without obstructing access to the open space or the buildings, and without unreasonably interfering with the enjoyment of the space by others, shall be allowed. While engaged in allowed activities, members of the public may not be asked to leave for any reason other than conduct that unreasonably interferes with the enjoyment of the space by others.

4.8 Notwithstanding these general requirements for public use of the Plaza and NPE, the owner of Site A shall make the Plaza and adjoining portion of NPE available on reasonable terms and at reasonable times, to entities and organizations seeking to conduct programmed public events.

4.9 The owner of Site A shall make NPE available at all times for use by motor vehicles accessing the service and parking entrances to the building on Site A, and by Sound Transit vehicles, except that the owner of Site A shall restrict vehicular access to NPE from the south when the Plaza and adjoining portion of NPE are in use for programmed events.

4.10 The owner of Site A shall maintain the Plaza and NPE in a safe, clean, and functional condition.

4.11 The pedestrian pass-throughs and the small plaza on the plinth along East Denny Way shall be open to the public during daylight hours, and for at least 16 hours per day, but they may be managed as private space compatible with building uses. The pedestrian pass-through on Site A may serve, at the developer's discretion, as lobby access to the residences in the building, so long as any doors at the ends of the pass-through are openable by the public at least 16 hours per day and clearly-identified as useable by the public during those hours.

5. AFFORDABLE HOUSING AND AFFORDABLE UNITS

5.1 Site B-North shall be developed exclusively as Affordable Housing.

5.2 The developers of Sites A, B-South, C, and D (unless D is developed by Seattle Central Community College consistently with its Major Institution Master Plan) shall participate in the City's Multifamily Housing Property Tax Exemption Program by filing an application for exemption no later than the application deadline if that Program is available. For purposes of this section, the "application deadline" shall be the 30th day after execution of the purchase and sale agreement for that Site, even if the Program were to allow an application for exemption to be filed later. For purposes of this Agreement, "Affordable Units" shall mean housing units that qualify as affordable within the meaning of the Program. The minimum percentage of Affordable Units required by the Program must remain in the Program for at least twelve consecutive years and may not be converted to another use, even if the Program were to allow a shorter period or other uses.

5.3 Affordable Units on each Site shall be constructed of the same quality, and in the same proportion of unit types (studio, one bedroom, etc) as the market-rate units on that Site.

5.4 The City will increase the height limit on Sites A, C, or D from 74'11" to 85' in exchange for proposals satisfactory to the City to provide enhanced affordable housing beyond any Affordable Units required by Section 5.2.

6. DEVELOPMENT STANDARDS SPECIFIC TO SITE A

6.1 The ground floor clear ceiling height of the building shall be between 15 and 20 feet high, and shall be recessed four feet from the property line on Broadway East in order to provide for an 18-foot wide sidewalk area. This sidewalk area may include green spaces and/or bicycle parking.

6.2 Overhead weather protection shall be provided along Broadway East. The weather protection shall be six to eight feet deep over the public right- of-way and shall be constructed between 12 and 20 feet above the sidewalk, as determined through the design review process.

6.3 The east-west building depth for all floors not partially below grade shall be a maximum of 80 feet.

6.4 On the south portion of Site A, a building plinth is required to accommodate the downward slope of the site from west to east. There shall be a 12-foot wide plaza at the south end of Site A on top of the plinth, and the south edge of the plinth may abut the property line at East Denny Way. On the east side the building, there shall be an 8-foot wide pedestrian way on the plinth connecting the building pass-through to the north and the private plaza to the south as depicted and described on pages 3 and 10 of the CDP. Direct access shall be provided between the plinth and the sidewalk on East Denny Way.

6.5 At the northwest corner of Site A, there shall be a first-floor diagonal building setback that creates an open triangular space for the sidewalk, to complement the Station entrance and plaza, as depicted on pages 7 and 13 of the CDP.

6.6 Site A shall construct and maintain an east-west pedestrian pass-through (which may, at the developer's sole discretion, be enclosed) connecting the sidewalk on Broadway East with the Plaza, aligned with the southern edge of Sound Transit's Vent Shaft, and as further described in Section 4.11. This pass-through shall be at least the same height as the ground floor of the building, be between 15 and 20 feet wide, and meet ADA standards. There shall be a discernible visual break in the building mass that marks the location of this pedestrian pass-through, as determined through the design review process.

6.7 The owner shall construct and maintain a 53-foot wide Plaza west of NPE and south of the Vent Shaft, comprising approximately 6,656 square feet, including an area approximately ten feet wide along the western edge of the Plaza that shall be used for bicycle parking, unless this bicycle parking is provided within the building consistently with Section 6.10. The owner shall install appropriate utilities in the Plaza and adjoining portion of NPE to support the area's use for programmed public events as provided in Section 4.8.

6.8 The owner shall construct and maintain NPE as a minimum 28-foot wide private street where motor vehicle traffic is calmed and pedestrians and bicyclists have priority over motor vehicles.

6.9 The design of the Plaza, NPE, and the 18-foot side sidewalk on East Denny Way shall complement and coordinate with the design of Seattle Department of Transportation's Festival Street on East Denny Way, as determined during the design review process.

6.10 The owner shall provide bicycle parking racks along the western edge of the Plaza south of the Station Vent Shaft adjacent to the building plinth, as depicted and described on page 9 of the CDP, or may instead include the same quantity of parking racks within the building so long as the racks are accessible to the public during the hours when the light rail system is in operation. These racks provide additional public bicycle parking beyond what SMC 23.54.015 requires for the uses in the building on Site A. There shall be a minimum 45 spaces in this area or within the building when the building opens for occupancy, and the number of spaces shall increase to 90 by 2030. This area shall be accessible from the pedestrian pass-through and NPE.

6.11 Vehicular access to the building shall be by means of a single curb cut on NPE, as depicted on page 15 of the CDP. A maximum 210 underground parking spaces shall be provided as depicted on pages 16 and 17 of the CDP.

6.12 The owner shall install a green roof on the building on Site A (although the owner may provide an alternative method to achieve the Site A Green Factor score listed in Section 3.1), planting strips on Broadway East, and two street trees on East Denny Way that match the species and size of other trees on the Festival Street.

7. DEVELOPMENT STANDARDS SPECIFIC TO SITES B-NORTH AND B-SOUTH

7.1 The maximum height of each building shall be 85 feet and the maximum building depth shall be 72 feet. The maximum length of each building is approximately 177.5 feet.

7.2 The buildings shall be set back five feet from the property line along 10th Avenue East, to make room for stoops, private gardens, and entry courtyards within this setback. Stoops must be provided on the east building façade.

7.3 There shall be a three-foot wide greenscape zone between the east property line and the back of sidewalk. In the event of a raised podium for an underground parking garage, this greenscape zone shall provide screening of the podium façade. In addition, there shall be a six-foot sidewalk, a seven-foot planting strip, and alternating seven-foot deep greenscape curb bulbs and seven-foot parking bays as depicted on page 6 of the CDP. Large tree species shall be planted in the curb bulbs, to provide a unifying visual theme with the mature vegetation of Cal Anderson Park.

7.4 On the west, each building shall be set back 11 feet from NPE to provide for amenity areas, including a five-foot wide sidewalk, and to make room for entries, private courtyards, private gardens, and stoops, if the developer chooses to include stoops on the west façade.

7.5 Vehicular access shall be by means of a single curb cut shared by the Sites on 10th Avenue East, as depicted on Page 15 of the CDP.

7.6 Parking space rents shall be unbundled from all Affordable Housing and all Affordable Units.

7.7 Site B-South shall construct and maintain a pedestrian pass-through between NPE and 10th Avenue East, as further described in Section 4.11, aligned with the Site A pass-through required in Section 6.6. This pass-through shall be at least the same height as the ground floor of the building, be between 15 and 20 feet wide, and meet ADA standards.

8. DEVELOPMENT STANDARDS SPECIFIC TO SITE C

8.1 The ground floor clear ceiling height of the building shall be between 15 and 20 feet high, and shall be recessed four feet from the property line on East Denny Way in order to provide for an 18-foot wide sidewalk area.

8.2 Overhead weather protection shall be provided along Broadway. The weather protection shall be six to eight feet deep over the public right-of-way and shall be constructed between 12 and 20 feet above the sidewalk, as determined through the design review process.

8.3 Vehicular access shall be by means of a single curb cut on Nagle Place, as depicted on page 15 of the CDP.

8.4 The upper two floors fronting East Denny Way shall be set back five feet, and no additional setback shall be required.

9. DEVELOPMENT STANDARDS SPECIFIC TO SITE D

9.1 The ground floor clear ceiling height of the building shall be between 15 and 20 feet high, and shall be recessed four feet from the property line on Broadway in order to provide for an 18-foot wide sidewalk area.

9.2 Overhead weather protection shall be provided along Broadway. The weather protection shall be six to eight feet deep over the public right-of-way and shall be constructed between 12 and 20 feet above the sidewalk, as determined through the design review process.

9.3 Vehicular access shall be by means of a single curb cut on Broadway, as depicted on page 15 of the CDP.

10. DESIGN REVIEW

10.1 In reviewing projects under this Agreement, the Design Review Board (“DRB”) will use the recently-adopted, site-specific design guidelines that supplement the Capitol Hill Neighborhood Design Guidelines, in addition to any other applicable guidelines. The recommendation of the DRB shall be consistent with this Agreement, but if there is a conflict between a DRB recommendation and the terms of this Agreement, the latter shall control.

10.2 The design and materials of the Plaza and NPE shall be compatible with the design and materials of the East Denny Way Festival Street in order to create a uniform style and functionality among the private and public open spaces.

10.3 The City’s design review process shall be modified as follows for development of the Sites:

10.3.1 The developer of each Site shall be required to present only one design alternative in addition to the proposal at the Early Design Guidance meeting. The DRB will strive to hold no more than two meetings and will

require no more than three; the developer may request additional meetings.

10.3.2 DPD will assign the proposals on all five Sites to the same planner, to the extent that the Department's workload permits.

10.3.3 If one developer successfully bids on more than one Site, the DRB will accommodate a request by such developer to consider the Sites controlled by that developer as a package at the same DRB meetings.

10.4 The developer of each Site may request to go through the standard design review process without being subject to the modifications of that process provided in Section 10.3.

11. MINOR VARIATIONS

11.1 During the MUP process, DPD may approve applications that vary in minor ways from the requirements of this Agreement. A minor variation is one that: (a) is consistent with the intent of this Agreement to achieve high-quality transit-oriented development near the Station; (b) will not result in significantly greater impacts than are allowed by this Agreement; and (c) will provide at least as much open space, amenity area, and Affordable Housing and Affordable Units as would a project that does not vary from the requirements of this Agreement. A minor variation may not approve greater height than is authorized by this Agreement.

11.2 A structure that is no more than 12 inches less than a stated minimum dimension shall be deemed consistent with this Agreement, and such lesser dimension shall not be subject to review during the MUP process and shall not require a minor variation.

12. SEPA AND THE MUP PROCESS

12.1 The MUP process for development of each Site (including but not limited to any design review or administrative appeal of a MUP or related SEPA conditioning decisions) shall not revisit or change any element of this Agreement.

12.2 Applications for MUPs for development of each Site will be subject to SEPA review, but notwithstanding the provisions of SMC 25.05.680 and Chapter 23.76, administrative appeals of compliance with SEPA's procedural requirements (including but not limited to threshold determinations or the adequacy of environmental review) related to development of a Site shall not be allowed; any such appeal must be filed directly in King County Superior Court.

13. SOUND TRANSIT'S COMMITMENTS

13.1 Sound Transit will offer Site B-North to not-for-profit developers for development solely as Affordable Housing. Sound Transit will provide for City participation in the RFQ/P process for this Site so that the City may assist in evaluating the proposals and may offer appropriate City financing.

13.2 Sound Transit will provide a minimum of 88 bicycle parking spaces in one or more covered secure cages in the area west of the Station Vent Shaft, and will increase the number of such bicycle parking spaces to 176 by 2030. In addition, Sound Transit will provide 40 bicycle parking spaces at racks near the west entrance to the Station.

14. CITY COMMITMENTS

14.1 The City will expedite its review of MUP applications for development of the Sites.

14.2 The City will apply the terms of this Agreement to future owners of the five Sites and applicants for permits to develop these Sites.

14.3 Subject to applicable law, City funding policies and guidelines, and City appropriation, the City will provide financial resources, such as the Housing Levy, to help fund Affordable Housing on Site B-North.

15. EFFECTIVE DATE AND TERMINATION

15.1 This Agreement shall be effective when signed by the Mayor and Sound Transit's Chief Executive Officer, and shall expire ten years after its effective date.

15.2 In the event that Sound Transit does not receive an acceptable response to its RFQ or RFP for any Site, Sound Transit may propose changes to this Agreement, and the City agrees to immediately negotiate such proposed changes in good faith. If such negotiations do not promptly lead to amendment of this Agreement, or if amendment of this Agreement does not promptly lead to acceptable responses to Sound Transit's RFQs and RFPs, Sound Transit may terminate this Agreement by providing notice of such termination to the City's designated representative. As of the date of such notice of termination, this Agreement shall no longer have regulatory effect on the Sites, and they may be sold and developed consistently with the underlying zoning.

15.3 For purposes of this section, an "acceptable response" to Sound Transit's RFQ/P process is one that is consistent with this Agreement, and that provides fair market value to the satisfaction of both Sound Transit and the Federal Transit Administration. Fair market value will be determined by comparable sales appraisal methodology. Site B-North will be appraised as property with an NC3-40 zoning designation; all other Sites will be appraised at highest and best use.

15.4 The restrictions in this Agreement shall not apply to the Sites in perpetuity, and after the Sites are developed in accordance with this Agreement, or after the expiration or termination of this Agreement, they may be redeveloped in the future in accordance with City regulations in effect at the time of such future re-development.

16. NOTICE AND DESIGNATED REPRESENTATIVES

16.1 It is expected and desired that there will be many informal communications between City staff and Sound Transit staff regarding the interpretation and implementation of this Agreement. The City and Sound Transit agree to work cooperatively with each other to interpret and implement this Agreement. However, if disagreements arise about the meaning or effect of this Agreement that staff cannot informally resolve, the designated representative of either Party may invoke the dispute resolution provisions of this Agreement by providing written notice to the other Party's designated representative. If written notice is given by email, it shall be accompanied by mailed or hand-delivered notice.

16.2 The City's designated representative is:

Diane Sugimura, Director
Department of Planning & Development
700 Fifth Avenue, Suite 2000
Seattle, WA 98104-5070
206-233-3882
diane.sugimura@seattle.gov

16.3 Sound Transit's designated representative is:

Ric Ilgenfritz, Executive Director Sound Transit Planning, Environment
and Project Development
401 South Jackson
Seattle, Washington 98104-2826
206-398-5264
ric.ilgenfritz@soundtransit.org

16.4 The City and Sound Transit may change designated representatives by written notice to the other Party's designated representative.

17. DISPUTE RESOLUTION AND REMEDIES

17.1 The Parties shall attempt to resolve in good faith any disputes regarding the interpretation or implementation of this Agreement by using the procedures in this section, except that a decision by Sound Transit to terminate this Agreement pursuant to Section 15.2 for failure to receive an acceptable response to an RFQ or RFP for any Site shall not be subject to this dispute resolution process.

17.2 The Parties agree that time is of the essence in the implementation of this Agreement, and the Parties agree to use this dispute resolution process in a cooperative and efficient manner.

17.3 This dispute resolution process shall commence when the designated representative of one Party notifies the designated representative of the other Party that he or she is commencing the process.

17.3.1 Level One: The City's Planning Division Director and Sound Transit's Transit-Oriented Development Manager shall meet to discuss and attempt to resolve the dispute. If they cannot resolve the dispute within fourteen calendar days after notice by a Party's designated representative of the commencement of this process, either Party's designated representative may give notice that he or she is referring the dispute to Level Two.

17.3.2 Level Two: The City's Director of Planning and Development and Sound Transit's Executive Director of Planning, Environment and Project Development shall meet to discuss and attempt to resolve the dispute. If they cannot resolve the dispute within fourteen calendar days after referral to Level Two, either Party's designated representative may give notice that he or she is referring the dispute to Level Three.

17.3.3 Level Three: The City's Office of the Mayor and Sound Transit's Office of the CEO shall meet to discuss and attempt to resolve the dispute within fourteen calendar days after referral to Level Three.

17.4 If the Parties cannot resolve the dispute within fourteen calendar days after referral to Level Three, then either Party's designated representative may give notice that he or she is requesting the other Party to participate in mediation or another method of dispute resolution. Whether or not the Parties agree to participate in such alternative dispute resolution, after unsuccessful completion of the Level Three process either Party may file an action in King County Superior Court seeking a declaratory judgment, specific performance, equitable relief, or a combination of these remedies. Neither party may seek damages for breach of this Agreement, but the prevailing party in any dispute that is resolved by a court shall be entitled to reasonable attorney fees and costs.

17.5 During the pendency of any dispute, neither Party shall be relieved of its obligation to comply in good faith with all provisions of this Agreement that are not in dispute.

18. BINDING ON SUCCESSORS

18.1 This Agreement shall be binding upon and inure to the benefit of the successors and assigns of the City and Sound Transit.

19. GOVERNING LAW

19.1 This Agreement shall be interpreted, construed, and enforced in accordance with the laws of the State of Washington. Venue for any action under this Agreement shall be King County, Washington.

20. INTERPRETATION

20.1 This Agreement has been reviewed and revised by legal counsel for the City and Sound Transit, and no presumption or rule that ambiguity shall be construed against the party drafting the document shall apply to the interpretation or enforcement of this Agreement.

20.2 This Agreement constitutes the entire agreement between the Parties with respect to its subject matter, and supersedes all prior negotiations, understandings and agreements, including but not limited to the Term Sheet executed October 5, 2012.

21. AMENDMENT

21.1 This Agreement may be amended only by written instrument executed by both Parties pursuant to authorization of the City Council and Sound Transit Board. No failure to exercise, and no delay in exercising, any rights, power, or privilege in this Agreement shall operate as a waiver thereof.

21.2 Nothing in this Agreement shall limit the City's authority to impose new or different regulations inconsistent with this Agreement to the extent required by a serious threat to public health and safety.

22. SEVERABILITY

22.1 If any provision of this Agreement is determined to be unenforceable or invalid by a court, the remaining terms of this Agreement shall remain in effect. However, either Party may invoke this Agreement's dispute resolution process to resolve any disputes about the effect of the court's decision on the remainder of this Agreement.

23. RECORDING

23.1 This Agreement will be recorded with King County by the later of 30 days after the Agreement's effective date or 30 days after City approval of Lot Boundary Adjustments so that the boundaries of the legal parcels subject to this Agreement correspond to the Sites depicted in the CDP.

24. EXECUTION IN COUNTERPARTS

24.1 The Parties may execute this Agreement in counterparts, each of which shall be deemed an original, and all counterparts together shall constitute one and the same instrument.

IN WITNESS WHEREOF, each of the parties has executed this Agreement by having its authorized representative affix his/her name in the appropriate space below.

CENTRAL PUGET SOUND REGIONAL TRANSIT AUTHORITY (SOUND TRANSIT)

By: _____
Joan M. Earl, Chief Executive Officer

Date: _____

Authorized by Motion No. _____

Approved as to form:

By: _____
Stephen G. Sheehy, Legal Counsel

THE CITY OF SEATTLE

By: _____
Michael McGinn, Mayor

Date: _____

Authorized by Ordinance No. _____